



Prevention of Harassment and Discrimination Policy

January 2014

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Policy

CARE Australia does not tolerate discrimination and harassment under any circumstances and will take disciplinary action, which may include dismissal, against any worker who discriminates or harasses any worker.

CARE Australia is committed to:

- creating a working environment which is free from discrimination and harassment and where all workers are treated with dignity, courtesy and respect;
- implementing training and awareness raising strategies to ensure that all workers know their rights and responsibilities;
- providing an effective procedure for complaints, based on the principles of natural justice;
- treating all complaints in a sensitive, fair, timely and confidential manner;
- guaranteeing protection from any victimisation or reprisals;
- encouraging the reporting of behaviour which breaches the discrimination and harassment policy; and
- promoting appropriate standards of conduct at all times.

Legislation

Sexual harassment and victimisation is unlawful under the *Sex Discrimination Act 1984* (Cth) as well as anti-discrimination legislation operating in every State and Territory. Unless CARE Australia has taken all reasonable steps to prevent a worker from committing acts of sexual harassment or victimisation in connection with their employment, CARE Australia is vicariously liable for that conduct. Individuals can be found to be personally liable for their own acts of sexual harassment as defined under the relevant sex discrimination legislation. They can also face liability through a complaint made to the Human Rights Commission or through legal proceedings in the Federal Magistrates Court or the Federal Court of Australia.

All cases of workplace bullying are covered by state-based occupational health and safety legislation, which places a general obligation on employers to ensure a safe working environment for their workers. Employers can be held responsible for any workplace bullying or violence that happens in the workplace, and individual workers can be held liable for any bullying or violence they are involved in. The laws in relation to workplace bullying do not only apply to the physical work environment. Any comments that a worker may make, or activities that they engage in, which could be considered to have a connection to the workplace, might be subject to both the terms of their employment agreement and the applicable State or Territory health and safety laws.

Other relevant legislation includes:

- *Australian Human Rights Commission Act 1986,*
- *Age Discrimination Act 2004,*
- *Disability Discrimination Act 1992,*
- *Racial Discrimination Act 1975, and*

- *Fair Work Act 2009.*

Definitions

What is the workplace

The 'workplace' can be defined as including "the place where work is carried out, or where there is a sufficient connection to the workplace, including any online activity which relates to work".

Under this definition, the workplace may encompass on- and off-site work-related events including social events; emailing, texting, tweeting or other social media postings; and any other activities that have a connection to the workplace.

What is a worker

A worker is a person who carries out work in any capacity for CARE in its workplace, including:

- an employee;
- a contractor or subcontractor;
- an employee of the contractor or subcontractor;
- an employee of a labour hire company who has been assigned to work in CARE;
- a student gaining work experience; or
- a volunteer/intern

What is harassment

Harassment is any form of behaviour that is unwelcome, unsolicited, unreciprocated and usually (but not always) repeated. It is behaviour that is likely to offend, humiliate or intimidate. It can make it difficult for effective work to be done by the worker or groups targeted or affected by this behaviour. For harassment to occur there does not have to be an intention to offend or harass. It is the *impact* of the behaviour on the person who is receiving it, together with the nature of the behaviour, which determines whether it is harassment.

Harassment has the effect of offending, humiliating or intimidating the person at whom it is directed. It makes the CARE Australia environment unpleasant and sometimes even hostile. If a person is being harassed, their ability to work effectively is affected.

Harassment is any type of behaviour that:

- the other person does not want; ***and***
- offends, insults, humiliates or intimidates them; ***and is either***
- sexual, *or*
- targets them because of their race, sex, pregnancy, marital status, transgender, sexual preference or orientation, disability, age, carers' responsibility, political belief, lack of a political belief, lack of a particular political belief (including trade union activity or lack of it), religious belief, lack of a religious belief, and/or lack of a particular religious belief; ***and***
- that, in the circumstances, a reasonable person should have expected would offend, insult, humiliate, or intimidate.

This includes actual, potential and perceived (imputed) race, sex, pregnancy, marital status, etc. Some types of harassment, such as sexual harassment and other forms of physical assault and/or stalking, are also illegal under criminal law. These types of harassment may result in criminal prosecution.

Further, 'workplace' in this context is defined to include not only the usual work environment, but also work related events, seminars, conferences, work functions, Christmas parties, and business trips.

Some examples of workplace harassment might include:

- offensive physical contact, derogatory language or intimidating actions;
- insulting or threatening gestures or language (overt or implied) or continual and unwarranted shouting in the workplace;
- unjustified and unnecessary comments about a person's work or capacity for work;
- openly displayed pictures, posters, graffiti or written materials which might be offensive to some;
- phone calls or messages on electronic mail or computer networks which are threatening, abusive or offensive to workers;
- persistent following or stalking within the workplace, or to and from work; and
- the exclusion of a person or group from normal conversations, work assignments, work related social activities and networks in the workplace.

What is sexual harassment

Sexual harassment is any conduct of a sexual nature that occurs in circumstances whereby a reasonable person would have anticipated that the person harassed would be offended humiliated or intimidated. Conduct of a sexual nature includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing. Sexual harassment is about how people view the behaviour and whether it was reasonable in the circumstances for them to feel that way, not how the behaviour was intended in the first place.

A person could be sexually harassed by:

- A Supervisor;
- Manager;
- Subordinate
- Co-worker;
- Contractor;
- Service provider;
- Client; or
- Customer
- Volunteer/intern

CARE Australia has a legal responsibility to prevent sexual harassment; otherwise it can be liable for the behaviour of its workers.

What is bullying

Bullying may be described as repeated and unreasonable behaviour directed towards a person, or a group of people, that creates a risk to health, safety and well-being. Repeated behaviour refers to the persistent nature of the behaviour and refers to a range of behaviours over time. Unreasonable behaviour is behaviour that a reasonable person, having regard to the circumstances, may see as unreasonable (in other words, it is an objective test). Bullying hampers productivity by creating dysfunction and damaging morale within work environments. It includes behaviour (generally a pattern of behaviour) that intimidates, offends, degrades or humiliates another person, including by electronic means such as email, notice boards, blogs and social networking websites. Examples of behaviours that may amount to bullying include:

- intimidation;
- victimisation;
- verbal abuse or threats, including yelling, screaming or offensive language;
- excluding or isolating people from workplace activities;
- assigning impossible tasks, meaningless tasks unrelated to the job, or giving someone the majority of unpleasant tasks;
- undermining responsibility;
- withholding information essential to do a task properly;
- copying emails that are critical about someone to others who do not need to know;
- making threats or comments about job security without foundation;
- spreading malicious rumours;
- cyber bullying; or
- physical abuse.

For example:

1. *A staff member alleges ongoing bullying by their immediate supervisor. They report that the supervisor openly criticises their work in meetings in a disparaging manner and sabotages their efforts to undertake their job by either not informing them of important meetings or withholding relevant information. The supervisor however also takes credit when it suits them for the staff member's work.*

Bullying behaviour can include abusive language that frightens, threatens or intimidates, spreading gossip or malicious rumours, isolating an individual from their colleagues, overloading a person with too much work, demoralising them by not giving them enough, or any combination of these things.

Examples of direct bullying include:

- Verbal abuse
- Putting someone down

- Spreading rumours or innuendo about someone
- Interfering with someone's personal property or work equipment.

Examples of indirect bullying include:

- Unjustified criticisms or complaints
- Deliberately excluding someone from workplace activities
- Deliberately denying access to information or other resources
- Withholding information that is vital for effective work performance
- Setting tasks that are unreasonably above or below a worker's ability
- Unreasonably overloading a person with work or not providing enough work
- Deliberately changing work arrangements such as leave to inconvenience a particular worker or workers
- Unfair treatment in relation to accessing workplace entitlements such as leave
- Setting deadlines or standards that are very difficult to achieve
- Excessive scrutiny at work

What is discrimination

Discrimination occurs when someone, or a group of people, is treated less favourably than another person or group because of their race, colour, national or ethnic origin; sex, pregnancy or marital status; age; disability; religion; sexual preference; trade union activity; or some other characteristic specified under anti-discrimination or human rights legislation.

Workplace discrimination can occur in:

- recruiting and selecting staff
- terms, conditions and benefits offered as part of employment
- who receives training and what sort of training is offered
- who is considered and selected for transfer, promotion, retrenchment or dismissal.

Discrimination may be 'direct' or 'indirect'.

Direct Discrimination

'Direct' discrimination occurs when a person treats another person less favourably, because of the other person's race, sex, pregnancy, marital status, transgender, sexual preference or orientation (including homosexuality, lesbianism, bisexuality and heterosexuality), disability, age, carers' responsibility, political belief, lack of a political belief, lack of a particular political belief (including trade union activity or lack of it, and student association activity or lack of it), religious belief, lack of a religious belief, and/or lack of a particular religious belief, than they treat or would treat a person without that characteristic in the same or similar circumstances.

This includes actual, potential and perceived (imputed) race, sex, pregnancy, marital status, etc.

For example:

1. *A selection committee decides not to appoint a young woman on the ground that she may in the future become pregnant and want to take maternity leave. This would be 'direct' discrimination on the ground of potential pregnancy.*
2. *An worker is from a non-English-speaking background and the team leader thinks he would be difficult to understand. This could be an example of direct race discrimination.*

Indirect Discrimination

'Indirect' discrimination occurs when a person requires another person to comply with an unreasonable requirement or condition, with which the other person is unable to comply due to his or her race, sex, pregnancy, marital status, etc, and with which a substantially higher proportion of persons without that characteristic can or would be able to comply.

For example:

1. *A manager requires all applicants for a position to speak and write English fluently, where fluency in written English is not required in order to carry out the essential requirements of the job.*

What harassment/discrimination is not

Workplace harassment or discrimination must not be confused with legitimate comment and advice (including relevant negative comment or feedback) from managers and supervisors on the work performance or work related behaviour of an individual or group.

The process of providing feedback to staff during a formal performance appraisal, or counselling staff regarding their work performance, will not always be free of stress. Managers should manage these processes with sensitivity, but they should not avoid their responsibility to provide full and frank feedback to staff.

The following behaviours do *not* constitute bullying:

- reasonable management practices, including performance management and disciplinary procedures;
- a direction to carry out reasonable duties and instructions;
- a direction to comply with CARE Australia policies or guidelines.

Victimisation

Victimisation involves treating someone unfairly because they have made, or intend to make, a discrimination or harassment complaint. This also includes those who have supported another person in making a complaint. Immediate action will be taken against any worker who retaliates or victimises a complainant.

Roles and responsibilities

All Workers

All workers have the responsibility to monitor their own conduct and to maintain appropriate standards of behaviour. Further, all workers must:

- Comply with this Policy;
- Act in accordance with the CAs Values and Code of Conduct;
- Speak out against discrimination and harassment if it is witnessed;
- Be aware of the issue of harassment, of the forms it can take and of the damage it can do to individuals and organisations; and
- Ensure that their conduct does not include behaviour that could possibly constitute harassment or discrimination.

Managers

Managers have additional responsibilities, and are expected to:

- Be aware of and familiar with CARE Australia's Policy on workplace harassment and discrimination and its application;
- Actively support and promote this Policy;
- Set a good example of professional behaviour and establish high standards of behaviour in the workplace;
- Monitor the work environment and take action to stop discrimination and harassment immediately it is observed or reported;
- Encourage workers to report instances; and
- Respond promptly, seriously and with sensitivity to every complaint.

It is important to note that managers have a positive duty to prevent discrimination and harassment in the workplace. That is, they must be proactive in addressing incidents when they become aware – or could reasonably be expected to be aware – of them. This includes cases where the worker has not made a complaint.

Human Resources Branch

The Human Resources Branch is responsible for developing policy to ensure that CARE Australia meets its obligations and requirements under relevant legislation. It is also responsible for providing advice, guidance and ongoing support to managers and staff in relation to the prevention of discrimination or harassment. If necessary, workers and managers can seek advice and/or assistance from the Human Resources Branch on how to handle situations.

Resolution

Generally, complaints can be resolved either informally, or formally and in different ways which include:

- confront the harasser;
- make a formal complaint to management using internal complaint procedures; or
- make an external complaint to the Fair Work Commission, Human Rights Equal Opportunity Commission or the relevant State or Territory anti-discrimination agency.

Before deciding on how to resolve the complaint workers should:

- clearly define their concerns and desired outcome;
- assess the advantages and disadvantages of the informal versus formal process;
- consider the complexity of the situation (a formal option may need careful consideration if the situation is very complex);
- be aware of support mechanisms available, for example counselling; and
- acknowledge the consequences of making malicious, frivolous or vexatious complaints (complaints that are deliberately harmful, spiteful, trivial or unworthy of serious attention or resources).

Informal Resolution Process

If you believe you are being subjected to any kind of discrimination or harassment you should not ignore it, as ignoring it may be seen as unspoken consent from the alleged harasser's point of view.

Generally these issues can be resolved without the need for formal intervention. If you feel comfortable to do so, an option available is to talk to the person. In many instances such simplistic measures are a success as:

- It allows the matter to be addressed quietly and without labels being attached to anyone. This is particularly important where the behaviour was unintentional or misguided.
- It allows for positive action to be taken to correct or alter behaviour.
- It focuses effort on putting future working relationships onto a proper basis by clarifying what is regarded as acceptable behaviour and what is not.

You may also discuss the situation with your manager. Discussions should explore options for informally resolving issues in the workplace.

- All complaints will be taken seriously but you should not be pressured into taking particular actions and you should only be encouraged to confront the harasser directly if you feel confident enough to do so.
- Managers should ensure that the situation is resolved to the satisfaction of the affected parties. At the same time, the manager should ensure that the worker alleging harassment or discrimination is acting in good faith and not out of malice.

This option allows management to implement preventative measures throughout a work area without attributing blame to one person or another. This can be important when the harassment/discrimination is the result of group behaviour or when what has been regarded as

'normal' behaviour in the work area is perceived as harassment or discrimination by someone new to the area.

If you feel uncomfortable talking with your manager, you may speak to a Staff Liaison Officer or to the Human Resources Branch. You may also get additional support by accessing the free counselling services provided by the CARE Australia [Employee Assistance Program](#). Services include counselling on work issues, effective communication, relationship problems and stress management.

Formal Resolution Process

If you are not satisfied with the outcome of the informal resolution process, or you feel that you are unable to resolve the issue through informal means you may make a complaint through the formal resolution process. All complaints will be taken seriously and every attempt will be made to resolve the matter in a fair, timely and confidential manner.

Formal complaints can be made to a Country Director (CD) or to a Principal Executive (PE).

Based on the seriousness of the presenting issues and the remedy sought by the complainant, a decision will be made as to the most appropriate method for resolving the complaint. This could be through a negotiated resolution or by conducting a formal investigation. A formal investigation occurs when there is a need for a systematic and detailed examination of the circumstances leading to the complaint to determine whether inappropriate behaviour has occurred and the need for, and nature of, any further action. Information is gathered in relation to the allegations and is used to determine a finding and inform a recommended resolution. Where a matter is judged as being appropriate for formal investigation, every effort will be made to respect the complainant's right to request, and the respondent's desire to seek, a negotiated resolution. Some situations will, however, require that a formal investigation be conducted even when a negotiated resolution has been requested.

If a formal investigation is required the principles of procedural fairness will occur during the course of the investigation. This includes an individual's right to be heard, to be given a fair opportunity to present his or her case, to be given adequate time and sufficient detail to respond, and to be aware of the information held by the decision-maker prior to the decision being made.

It is acknowledged that making a complaint is a serious matter and both parties involved may feel anxious or uneasy about what lies ahead.

At all stages of the formal process the workplace environment and culture will be monitored to eliminate discrimination and harassment.

The CD/PE will:

- assess the complaint and determine the most appropriate approach to effect a resolution;
- ensure confidentiality is maintained throughout the complaint resolution process;
- ensure both the respondent and the complainant are treated fairly and afforded appropriate support throughout the complaint resolution process;

- ensure management of the complaint by communicating effectively with the complainant and respondent;
- monitor and take appropriate action to facilitate and support a safe and positive work environment for all workers associated with the complaint;
- manage and coordinate resolution options, including conducting interviews with the complainant, the respondent, witnesses and other relevant individuals;
- ensure proper record keeping and document handling, including secure storage of all documentation associated with the complaint;
- make recommendations to the delegate who has authority to enforce any future actions requiring approval if she/he does not have such authority;
- implement or enforce the recommendations to effect a resolution of the complaint;
- ensure that the complainant and respondent are informed of the outcome and the recommended actions being implemented to bring closure to the complaint.

Complainant

The complainant has the following rights and responsibilities:

- to be treated in a fair and consistent manner;
- to be protected from victimisation;
- to provide correct and accurate written information in good faith to substantiate their complaint;
- to co-operate with the Complaint Manager in the resolution of her/his complaint;
- obtain advice and support from within CA and from external agencies.

Respondent

The respondent has the following rights and responsibilities:

- to be treated in a fair and consistent manner;
- to be protected from victimisation;
- to provide correct and accurate information in good faith in response to the complaint;
- to be provided, where appropriate or necessary, with clear guidelines about required changes or improvements to their behaviour;
- to be supported in her/his endeavours to change their behaviour (where relevant);
- to obtain advice and support from within CARE Australia and external agencies.

Confidentiality in the complaint resolution procedure

Confidentiality must be adhered to throughout the complaint resolution process. Confidentiality in the complaint resolution process means that a complaint can only be discussed with those people directly involved in the complaint or resolution process. Observing confidentiality helps to ensure the protection of the rights of all parties by limiting access to the details of the complaint. In addition, it helps to limit damage to any existing trust between the aggrieved parties, thereby facilitating resolution. If a complaint is made in good faith and truthfully, and the requirements of confidentiality have been observed, the complainant and those involved in the complaint resolution

process are likely to have a defense against any action, such as qualified privilege. In addition, by preserving confidentiality, there will be an enhanced capacity for complaint resolution, as the parties will have greater confidence in each other when involved in the complaint handling process. Each party to a complaint is entitled to both personal and professional advice and support. This may involve approaching and confiding in an SLO or the Human Resources Branch, contacting CARE's [EAP provider](#) who can provide counseling on work issues, relationship problems and stress management. It is expected these people will maintain strict confidentiality.

Keeping the complainant's identity confidential

A complainant may request that their identity remains confidential when making a complaint but this may limit options for negotiating a resolution with the respondent. For example, an apology is unlikely to be forthcoming if the identity of the complainant is not known. The PE/CD should discuss this request with the complainant, explaining that maintaining confidentiality in relation to identity may impact on the complainant's ability to achieve the remedy she/he is seeking. A respondent is entitled to have full information regarding a complaint and therefore a complainant's identity remaining confidential cannot be assured. While every effort will be made to comply with a request to keep the complainant's identity confidential, Freedom of Information requirements may result in a complainant's identity becoming known. A complainant should be advised to write their complaint with the knowledge that the respondent may gain access to the written complaint. The PE/CD is responsible for ensuring that all complaints are documented in the knowledge that the identity of the complainant may be revealed.

Record Keeping

Where a matter is progressed to formal processes full records must be maintained. Records may include emails; minutes of meetings; reports, recommendations and recorded outcomes. A file will be created and stored in the Human Resources Branch. Attachment A and B may be used to assist the record keeping requirements. Where the complaint is proven, records will be retained for 5 years. Where there has not been a finding records will be destroyed 18 months after the investigation is completed.

Breach of this Policy

A breach of this policy will result in disciplinary action. Depending upon the severity of the case, consequences may include apology, counselling, transfer, demotion, dismissal, or other forms of disciplinary action deemed appropriate.

Guide for informal resolution of complaints for managers or supervisors

The following information is a guide for managers and supervisors to assist with the informal resolution of complaints within the workplace. Suggestions will assist managers when approached by an individual regarding discriminatory or harassing behaviour.

Managers/supervisors

- Be aware that individuals who approach you about harassment may feel a range of emotions; anger, distress, vulnerable, intimidated, frustrated, powerless, etc.
- Support the complainant by reassuring them that they have taken the appropriate action by seeking your assistance.
- Listen, take seriously, be sensitive and non-judgemental.
- Inform them that no form of harassment is acceptable and they have a right to complain and have the offensive behaviour stopped.
- Outline the organisation's policy and procedures.
- Ask the complainant how they want the situation to be handled.
- Discuss options and outcomes.
- Advise about confidentiality.
- Any record keeping should take the form of simple diary notes.

Practical steps towards a positive resolution

- Ask the worker if they have considered what outcome they would like to achieve – the initial aim should be to stop the behaviour perceived as harassing, now and in the future.
- Assist the worker to undertake "self-help" resolution if appropriate – discuss ways in which they could tell the offender that their behaviour upsets them and they want them to stop it,
- Consider and discuss any options that could be implemented in the workplace or work unit that would raise the awareness of organisational values, codes of conduct, appropriate behaviours eg. discussions at team meetings – it's important that any solution implemented maintains the privacy and the confidentiality of the complainant
- If necessary, and with the agreement of complainant, approach the person against whom the complaint is made.
- Monitor and ensure behaviour does not recur and that the complainant is not victimised.
- If necessary discuss continuing, serious and/or difficult problems with management or the Human Resources Branch as soon as possible – it may not be possible for the complainant to resolve the issue alone and management may need to take formal investigatory action.
- Seek advice and/or assistance from the Human Resources Branch on how to handle the situation, if necessary.

Informal discussions with the person against whom a complaint has been made

- Listen to their point of view.
- Inform them of relevant policy and procedures.
- Inform them that if the alleged behaviour did occur they would be in breach of the CA's policy and state/federal law.

- Advise that even if behaviour were not intended to be offensive, offence has been taken and needs to be resolved.
- Clarify acceptable and unacceptable behaviour.
- Obtain an undertaking that the behaviour in question, regardless of whether admitted or not, will not be repeated by the respondent in the future.
- Advise of potential penalties if the behaviour continues the need for confidentiality.
- Discuss any action needed to resolve the complaint and relay this to the complainant.

Attachment A – Complaint Form

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Complaint Form

This form can be used as a tool to assist you to clarify your complaint and provide initial documentation, if required

Name:	Contact Phone Number:
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Complaint Details:	
Discrimination	<input type="checkbox"/>
Harassment	<input type="checkbox"/>
Bullying	<input type="checkbox"/>

Outline of the Issue:

What steps have you already taken to resolve the issue(s)? (Include names of the people you have approached for advice and/or assistance. Attach an extra page if necessary)

What resolution are you seeking?

Signature:	Date:
(Complainant)	



Attachment B – Complaint Management Form

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Complaint Management Form

Complaint Assessment

Complaint Manager:	
Name:	Contact Details:

Issues underlying the complaint:

Resolution Options:	
<input type="checkbox"/>	Conference with the Parties – may be direct resolution or involve a mediator/facilitator/conciliator
<input type="checkbox"/>	Formal Investigation
<input type="checkbox"/>	External Agency

Action(s) taken:

Outcomes: Outcome of action taken: (could include, to be heard, explanation given, apology, change behaviour, T&D, counselling, warning, directive, system change)

